

INVITATION TO TENDER

FOR

Tender Ref: 1314-59

**To Supply, Deliver, Install and Commission Gym
Equipment, with Training and Marketing support provision,
and 5 years Maintenance Service**

FOR

West Dunbartonshire Leisure Trust

All correspondence relating to this Tender should be addressed to:

**Andrea Brown
West Dunbartonshire Council
Garshake Road
Dumbarton**

Tel. No: **01389 737188**

e-mail: andrea.brown@west-dunbarton.gov.uk

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Invitation To Tender to Supply, Deliver, Install and Commission Gym Equipment, with Training and Marketing support provision, and 5 years Maintenance Service

You are invited to tender for the above service. This Invitation to Tender contains the following:

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Section 2 - Scope of Requirements

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Section 4 – Pricing Schedule

Section 5 – Terms and Conditions of Contract

Appendices:-

Appendix 1 – Formal Agreement to Terms and Conditions of Contract

Appendix 2 – Non-collusion Certificate

Appendix 3 – Certificate of Non-canvassing

Appendix 4 – Pricing Schedule

Your tender must be received by noon on 17 July 2013 and comply with the Instructions to Tenderers detailed in the attached documentation.

SECTION 1 - TENDERING INSTRUCTIONS

Completion of Tender

Your tender should be submitted in accordance with the Tendering Instructions and should include:

- Section 3 – Response to Scope of Requirements
- Section 4 (Appendix 4) – Pricing Schedule
- Appendix 1 – Formal Agreement to Terms and Conditions of Contract
- Appendix 2 – Non-collusion Certificate
- Appendix 3 – Certificate of Non-canvassing
- Appendix 4 – Pricing Schedule

Confidentiality

Subject to the provisions of Freedom of Information detailed below, all information supplied by WDLT in connection with the Invitation to Tender shall be treated as confidential by tenderers except that such information may be disclosed for the purpose of obtaining sureties and quotations necessary for the preparation and submission of the tender.

Information Disclosure and the Freedom of Information Act 2002

All information submitted to WDLT may need to be disclosed and/or published by WDLT. WDLT may disclose information in compliance with the Freedom of Information (Scotland) Act 2002, (the decisions of WDLT in the interpretation thereof shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms), any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure.

Further, WDLT may also disclose all information submitted to them to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents. When disclosing such information to either the Scottish Parliament or the United Kingdom Parliament or their executive bodies, it is recognised and agreed by both parties that WDLT shall, if they see fit, disclose such information and are unable to impose any restriction upon the information that they provide to Members of the Scottish Parliament, or Members of the United Kingdom Parliament; such disclosure shall not be treated as a breach of this contract.

Accordingly, if you consider that any of the information included in your bid is commercially confidential, please identify it and explain (in broad terms) what harm might result from disclosure and/or publication. It should be noted though, that, even where you have indicated that information is commercially sensitive, WDLT may disclose this information where they see fit. Receipt by WDLT of any material marked "confidential" or equivalent should not be taken to mean that WDLT accept any duty of confidence by virtue of that marking.

Submission of Tender

Responses to the tender must be submitted through the Public Contracts Scotland (PCS) portal **by noon on 17 July 2013.**

If you are unable to submit an electronic copy, your tender response must be provided by post or hand delivered, sealed in the pre-addressed envelope to the Head of Legal, Democratic and Regulatory Services, 3rd Floor, West Dunbartonshire Council, Council Offices, Garshake Road, Dumbarton G82 3PU, by no later than noon on 17 July 2013. **Please contact Andrea Brown in advance of the deadline to give notice that a paper copy is expected.** If submitting a paper copy, your tender package should bear no marks indicating the sender. Failure to follow these instructions may render the tender invalid.

Late paper tenders will be opened with a witness to determine the supplier and will be returned to the sender. These tenders will not be scored in any way. Responses through Public Contracts Scotland will not be accepted after the deadline.

Clarification Regarding the Invitation To Tender

Please note that the responses to any questions raised during the tendering period will be circulated to all tenderers through the Public Contracts Scotland portal. The closing date for tenderers to raise questions by is 28 June 2013 and WDLT will communicate answers to all tenderers through the Public Contracts Scotland portal not later than 5 July 2013.

Tender Timetable

Questions of Clarification to be submitted by 28 June 2013
Response to questions of clarification to be published by 5 July 2013
Tender Submission deadline – **by noon on 17 July 2013**

Pricing

Prices should be submitted in accordance with the requirements of the Pricing Schedule at Section 4. All tendered rates/prices and any payments under a resulting contract shall be in pounds sterling. Tendered rates/prices shall be exclusive of VAT.

Treatment of Tender

An evaluation panel will consider all valid tenders and may seek further clarification of tenders as necessary to conclude a contract. The evaluation panel will assess responses to the ITT in accordance with the minimum selection criteria and evaluation scoring methodology detailed below.

Minimum Selection Criteria

The tender evaluation will be a stage 2 process. Tenders must provide in the 1st stage as a minimum requirement satisfactory evidence of items listed in the selection criteria. These are minimum requirements which will be scored on a pass or fail basis. Any element failed will result in the tender bid not being evaluated at the second stage.

Stage 1 - Selection Criteria	
Business probity and criminal convictions	Pass/Fail
Technical and professional ability	Pass/Fail
Economic and financial standing	Pass/Fail

Stage 2 - Evaluation Award Criteria

The second stage of the evaluation will include Financial 40% and Quality 60%. We will award this contract on the basis of the most economically advantageous (*MEAT*) tender which will be identified through application of the following evaluation criteria.

The Financial evaluation criteria has a scoring of **40%**. The Total Cost to WDLT will be the sum of costs for the criteria which has been specified below. The lowest Total Cost to WDLT will be awarded the highest score on total price.

Total Cost to WDLT (40%)	
Supply, delivery and installation of Gym equipment, with 5 years Maintenance Service	
Training	
Delivery	
Marketing	

The Quality evaluation criteria has a scoring of **60%**. The individual Quality criteria is as specified below.

Quality Evaluation Criteria (60%)	
Technical or professional capability	20%
Quality Management	20%
Sustainability	5%
Service Delivery	50%
Community Benefits	5%

Each scored question for Quality Evaluation Criteria will be based upon notes below.

Scoring Methodology for Quality Award Criteria	
0 Unacceptable	Nil or inadequate response. Fails to demonstrate an ability to meet the requirement.
1 Poor	Response is partially relevant and poor. The response addresses some elements of the requirement but contains insufficient/limited detail or explanation to demonstrate how the requirement will be fulfilled.
2	Response is partially relevant but acceptable. The response

Acceptable	addresses a broad understanding of the requirement but lacks details on how the requirement will be fulfilled.
3	Response is relevant and acceptable. The response is sufficiently detailed to demonstrate an acceptable understanding and provides details on how the requirements will be fulfilled.
Good	
4	Response is completely relevant and excellent overall. The response is comprehensive, unambiguous and demonstrates a thorough understanding of the requirement and provides details of how the requirement will be met in full.
Excellent	
5	Response is completely relevant and exceptional overall. The response is comprehensive, unambiguous and demonstrates a detailed understanding of the requirement and provides details of how the requirement will be surpassed.
Exceptional	

When we have made a decision on the award of this contract, we will inform you in writing as to whether or not you have been successful and offer feedback to you.

We reserve the right not to accept part or all of any tender or to accept any part, or all of any tender or tenders at our discretion.

No part of the tender documentation submitted will be returned to the tenderer.

Tender Validity

Your tender shall remain open for acceptance for ninety (90) days from the date for return of tenders indicated above, or any subsequent date notified to you by us. Your tender may be accepted by us at any time during this period.

Tender Queries

If you have any queries regarding this tender, these should be submitted via the Public Contracts Scotland portal not later than 28 June 2013 to the contact indicated on the tender timetable. Queries received after this date may not be responded to.

If our response is applicable to all tenderers, it will be notified to all tenderers via the facility in Public Contracts Scotland without disclosing the name of the tenderer who initiated the query.

Clarifications issued by Us

Any clarifications to the Invitation to Tender will be sent to tenderers not less than 10 days before the deadline for return of tenders. If necessary, we will revise the deadline to allow for this.

Alternative Bids

We will disregard any bids that do not comply with the Brief, unless indicated otherwise within this Invitation to Tender.

Changes to Tender Procedure

We reserve the right to change the tender process, including timescales and procedures. We will not accept any liability should we do so.

Qualification of Invitation to Tender

You should indicate in your tender submission if there are any areas where you will not be able to comply with the requirements of this Invitation to Tender. We reserve the right to reject any tender qualified in this manner.

Incurred Tender & Other Expenses

We will not pay any costs and expenses which may be incurred by you in connection with the preparation, submission, presentation or clarification of your tender.

Accuracy of Tender

You should check the accuracy of your tender prior to submission. A tender containing errors or omissions may, at our discretion, be referred back to you for correction and may be disqualified.

Language of Tender

The tender and all accompanying documents should be submitted in English.

Contract Management

If we award a contract to you, you will be required to co-operate with us in our management of the contract, and comply with our contract management requirements.

Disclaimer

We and/or our agents or advisers accept no liability for the accuracy, adequacy or completeness of any of the information provided or any opinions contained in this Invitation to Tender, or of any other information made available during the tender process.

If you submit a tender, you will be deemed to have understood fully the requirements of this Invitation to Tender.

The submission of a tender will imply acceptance of this provision by you. Any attempt to qualify this provision either expressly or implied, may result in your tender being disqualified.

Living Wage

Low pay and in-work poverty are significant issues in Scotland. While low pay has an influence on the attractiveness of work, "poverty traps" can act as a disincentive for people making the transition from benefits to work. West Dunbartonshire Leisure Trust recommend as good practice that suppliers should consider paying all of their employees a living wage. However, the Leisure Trust does expect all suppliers who enter into contracts with us to adhere to the National minimum wage legislation as a minimum. The links below provide further information in both of these areas.

<http://www.scotland.gov.uk/Publications/2010/07/livingwageanalysis/Q/Page/1>
<http://www.hmrc.gov.uk/payepayroll/day-to-day/nmw.htm>

Equality and Diversity

West Dunbartonshire Leisure Trust is committed to the promotion of equal opportunities in all its policies and services. The Leisure Trust's duties to avoid discrimination and to promote equality extend to its purchase of goods, works and services from external providers. The procurement of supplies, services and works in the Public Sector must always strive to achieve Best Value, benefit society, and comply with the legal framework governing public procurement. The Council encourages suppliers to promote equality and diversity in their own workforce.

Public Interest Disclosure Policy

WDLT operates a Public Interest Disclosure Policy. To view the policy, please visit our website here: www.west-dunbarton.gov.uk/business-and-trade/procurement

Information Sharing Protocol

WDLT supports the Scottish Governments policy on ensuring that public contracts are awarded to legitimate businesses and we share information about suppliers who bid for public contracts with Strathclyde Police. Failure to disclose relevant information may result in your exclusion from this competition or the termination of any contract that may be awarded to you.

Tenderer Details

Please insert the following background information:

Name of Contact for this Tender			
Position			
Company Name			
Address			
Tel No		Fax No:	
E-mail			

Any tender that does not accord with all the requirements herein and in the covering letter may not be considered.

SECTION 2 – SCOPE OF REQUIREMENTS

Introduction

West Dunbartonshire Leisure Trust is a not-for-profit organisation which manages the local areas 3 leisure centres, 14 community centres and the Active Schools and Sports Development Programmes. The Trust supports delivering the social and economic agenda for the area by enhancing recreational diversity.

The services provided by WDLT aims to improve the health of the community, generate learning opportunities and contribute to making West Dunbartonshire a better place to live.

West Dunbartonshire Leisure Trust's vision statement reflects their commitment to make a positive impact on the health and wellbeing of citizens.

“Inspiring Active and Healthier Communities”

West Dunbartonshire Leisure Trust (WDLT) wish to purchase a range of cardiovascular and resistance equipment. The opportunity has arisen for quality suppliers and manufacturers of fitness equipment to quote to supply, deliver, and install Gym Equipment; with training and marketing support provision, and 5 years maintenance service to WDLT. The equipment replacement programme will be at the Play Drome in Clydebank, Meadow Centre in Dumbarton and the Vale of Leven Swimming Pool in Alexandria.

West Dunbartonshire Leisure Trust – Head Office

Full Postal Address: Alexandria Community Centre
Main Street
Alexandria
G83 0NU

Requirements

WDLT is looking for the supply, delivery, installation and commissioning of Gym Equipment, with training and marketing support provision, and 5 years maintenance service to WDLT. The Contractor will be required to provide fitness equipment that is market leading, durable, innovative and safe and that meets the varying needs of WDLT and its customers, whilst representing the very best in terms of financial value. A definitive list of products required is specified within Section 4 Pricing Schedule.

WDLT is looking for more than the supply of equipment. WDLT is looking to forge a working relationship with the Contractor to ensure that WDLT (in relation to the customer experience) continues to offer a service of a consistently high standard.

Suppliers should ensure before returning the bid price documents that their tender submissions have been properly completed and that all information requested in the proposal specification has been clearly and accurately stated, as failure to do so will result in the proposal not being considered.

Terms and conditions

The terms and conditions will be set out in Section 5 of this tender document.

SECTION 3 - RESPONSE TO SCOPE OF REQUIREMENTS

You are invited to submit a proposal setting out clearly and in detail your approach to the scope of requirements at section 2 and how you are qualified to meet WDLT's requirements. This section must be completed and submitted with your tender.

Please note that West Dunbartonshire Leisure Trust may check the information provided by you with Strathclyde Police. Should any information you provide prove to be false your bid will not be progressed further.

REFERENCES (not scored)

Provide 2 completed referees for work within the last two years that is similar or the same to that required by this requirement.	
Referee Organisation Contact Name Title Address Email address Service Provided Period of Agreement Approximate Value	Referee Organisation Contact Name Title Address Service Provided Period of Agreement Approximate value
Referee Organisation Contact Name Title Address Email address Service Provided Period of Agreement Approximate Value	Referee Organisation Contact Name Title Address Service Provided Period of Agreement Approximate value

TENDERERS DETAILS (not scored)

All personal information supplied will be treated as confidential and will be subject to the Data Protection Act 1998.

1.	Name of Organisation (Organisation either tendering or acting)	
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	as lead contact where a consortium bid is being submitted)	
2.	Address for all correspondence (Including town/city and postcode)	
3.	Contact details for enquiries (Contact name and title)	
4.	Telephone Number (Including Dialling Code)	
5.	E-mail address of the contact	
6.	Website address (if applicable)	
7.	Address of Registered Office (Property name, street, town, county, postcode if applicable)	
8.	Nature of Organisation (E.g. Plc, Partnership etc)	
9.	Names of the current company directors, or any other person having powers of representation or control of the organisation (This information is subject to the Data Protection Act 1998) Prospective bidders should be aware that information supplied maybe used to ensure that the information you provide is valid	
10.	Group If the Organisation bidder is a member of a group of companies, please give the name and address and any company registration number of the immediate parent company and ultimate parent company if applicable. (For parent companies established outside the UK, equivalent information as set out in Regulation 23 of the Regulations)	
11.	If the bidder is a division or subsidiary, what is the relationship with the parent company? (Ownership, directorship, authority etc)	
12.	Provide a brief history of the bidder's organisation in no more than 400 words, including details of any parent and associated companies and any changes	

	of ownership over the last 5 years including details of significant pending developments, changes in financial structure or ownership, prospective take-over bids, buy-outs and closures, etc which are currently in the public domain.	
13.	VAT Registration Number (or alternative EU registration number)	
14.	Dun and Bradstreet Number (if known) of registered office.	
15.	In relation to provision of the service will your organisation be bidding as a consortium, joint venture or other arrangement?	<input type="checkbox"/> Yes <input type="checkbox"/> No
16.	<p>If you have answered "Yes" to the question above then please provide the following information:-</p> <p>-consortium lead name -the name and address of each proposed member of the consortium;</p> <p>if the consortium is legally constituted, details of the constitution of, and percentage interests of each member of, the consortium; and the role which each member of the consortium (whether or not the consortium is legally constituted) will perform and their estimated percentage involvement in delivery of the Authority's requirements.</p>	
17.	Will you be using sub contractors to meet sections of this requirement?	<input type="checkbox"/> Yes <input type="checkbox"/> No
18.	If you have answered "Yes" to the above question please provide details for each consortium members and key sub-contractors with particular regards to the goods and service they will provide and the percentage of their contribution in relation to the overall contract.	
19.	Is your organisation registered at companies house or Registered with an appropriate trade or professional register(s) (as set out in Regulation 23 (4) (j) of the Public Contracts (Scotland) Regulations 2012) under the conditions laid down by that member state. In the UK this condition is	<input type="checkbox"/> Yes <input type="checkbox"/> No

	satisfied by registration with Companies House or a declaration on oath that the candidate is carrying on business in the trade in question in the UK at a specific place of business and under a specific trading name.	
20.	If you have answered 'yes' to the above question then please provide your registration number.	

Stage 1 - Selection Criteria

BUSINESS PROBITY AND CRIMINAL CONVICTIONS (Pass/Fail)

Regulation 23 (1) and (4) of Public Contracts (Scotland) Regulations 2012 sets out mandatory and discretionary grounds on which a bidder may be deemed ineligible to tender.

<p>Criminal convictions and business probity - Mandatory Exclusions</p> <p>Failure to disclose information relevant to this section or serious misrepresentation in relation to the information disclosed will result in your exclusion from this procurement process or the termination of any subsequent contract that may be awarded to you.</p> <p>Please indicate if the organisation or its directors or any other person(s) having powers of representation, decision or control of the organisation been convicted of any of the following offences</p>		
21.	The common law offence of conspiracy where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008//841/JHA) or an offence under sections 28 or 30 of the Criminal Justice and Licensing (Scotland) Act 2010?	<input type="checkbox"/> Yes <input type="checkbox"/> No
22.	Corruption within the meaning of section 1(2) of the Public Bodies	<input type="checkbox"/> Yes

	Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906, where the offence relates to active corruption as defined in Article 3 of the Council Act of 26th May 1997 and Article 3 (1) of the Council Joint Action 98/742/JHA;	<input type="checkbox"/> No
23.	Bribery or corruption within the meaning of sections 68 and 69 of the Criminal Justice (Scotland) Act 2003 where the offence relates to active corruption, or bribery within the meaning of sections 1 or 6 of the Bribery Act 2010;	<input type="checkbox"/> Yes <input type="checkbox"/> No
24.	The common law offence of incitement to commit a crime;	<input type="checkbox"/> Yes <input type="checkbox"/> No
25.	Fraud, where the offence relates to fraud affecting the financial interests of the European Communities as defined by Article 1 of the Convention relating to the protection of the financial interests of the European Communities, within the meaning of – - the offence of cheating the Revenue; - the common law offence of fraud; - the common law offence of theft or fraud; - fraudulent trading within the meaning of section 458 of the Companies Act 1985 or section 993 of the Companies Act 2006; - fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979 or section 72 of the Value Added Tax Act 1994; - an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993; - the common law offence of uttering; or - the common law of attempting to pervert the course of justice	<input type="checkbox"/> Yes <input type="checkbox"/> No
26.	money laundering within the meaning of section 340(11) of the Proceeds of Crime Act 2002 or the	<input type="checkbox"/> Yes <input type="checkbox"/> No

	Money Laundering Regulations 2007, or an offence in connection with proceeds of drug trafficking within the meaning of sections 49, 50 or 51 of the Drug Trafficking Act 1994; or	
27.	Any other offence within the meaning of Article 45(1) of the Public Sector Directive as defined by the national law of any relevant state	<input type="checkbox"/> Yes <input type="checkbox"/> No

Note: Failure to disclose information relevant to this section may result in your exclusion from this competition or the termination of any contract that may be awarded to you.

<p>Criminal convictions and business probity</p> <p>The Authority may decide not to select or to treat as ineligible any bidding organisation on one or more of the following grounds.</p>		
28.	Are you an individual in respect of whom a debt relief order has been made or is bankrupt or has had a receiving order or administration order or bankruptcy restriction order or a debt relief restriction order made against them or has made any composition or arrangement with or for the benefit of creditors or has made any conveyance or assignment for the benefit of creditors or appears unable to pay, or to have no reasonable prospect of being able to pay, a debt within the meaning of section 268 of the Insolvency Act 1986(d), or article 242 of the Insolvency (Northern Ireland) Order 1989(e), or in Scotland has granted a trust deed for creditors or become otherwise apparently insolvent, or is the subject of a petition presented for sequestration of your estate, or is the subject of any similar procedure under the law of any other state?	<input type="checkbox"/> Yes <input type="checkbox"/> No

29.	Are you are bidding as a partnership constituted under Scots law that has been granted a trust deed or become otherwise apparently insolvent, or the subject of a petition presented for sequestration of your estate?	<input type="checkbox"/> Yes <input type="checkbox"/> No
30.	Are you a company or any other entity within the meaning of section 255 of the Enterprise Act 2002(f) which has passed a resolution or is the subject of an order by the court for the company's winding up otherwise than for the purpose of bona fide reconstruction or amalgamation, or has had a receiver, manager or administrator on behalf of a creditor appointed in respect of the company's business or any part thereof or is the subject of the above procedures or is the subject of similar procedures under the law of any other state?	<input type="checkbox"/> Yes <input type="checkbox"/> No
31.	Has the organisation been convicted of a criminal offence relating to its business or professional conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No
32.	Has the organisation committed an act of grave misconduct in the course of its business or profession?	<input type="checkbox"/> Yes <input type="checkbox"/> No
33.	Has the organisation failed to fulfil obligations relating to the payment of social security contributions in accordance with the legal provisions of the United Kingdom or the country in which it is established?	<input type="checkbox"/> Yes <input type="checkbox"/> No
34.	Has the organisation failed to fulfil obligations relating to the payment of taxes in accordance with the legal provisions of the United Kingdom or the country in which it is established?	<input type="checkbox"/> Yes <input type="checkbox"/> No
35.	Is the bidding organisation guilty of serious misrepresentation in providing any information referred to in this ITT or has not provided such information in response to a request by the contracting authority?	<input type="checkbox"/> Yes <input type="checkbox"/> No

36.	<p><i>If you have answered "Yes" to any of the above discretionary exclusions then please state any remedial action you have taken.</i></p> <p><i>Your responses may be considered by the Authority when deciding on the selection process.</i></p>	
37	<p><i>For service contracts only: Are you licensed in the relevant member State of the European Union in which you are established or a member of an organisation in that relevant State when the law of that relevant State requires the provision of the services can only be provided by persons who are so licensed or are such a member?</i></p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
38	<p><i>Bidders should be aware that certain information on bidders may be passed to Police Scotland for checking. This is for the purpose of monitoring organisations and individuals involved in criminal activities. Procedures and processes have been put in place to ensure the security of shared information in accordance with the Data Protection Act 1998</i></p>	<p>Please confirm you acknowledge that you understand information may possibly be shared between the Leisure Trust and Police Scotland</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>

TECHNICAL AND PROFESSIONAL ABILITY (Pass/Fail)

Insurance

It is a requirement of this contract that bidders hold the levels of insurance indicated below:

- **Employer's (Compulsory) Liability Insurance = £5 million**
- **Public Liability Insurance = £10million**

Please confirm below whether you already have or can commit to obtain, prior to the commencement of the contract (or, if applicable, the framework agreement), the levels of insurance cover indicated. Bidders that do not have, or cannot commit to obtain, the required levels of insurance may be excluded from further participation in this procurement exercise.

39.	Employer's (Compulsory) Liability Insurance (if applicable as this does not apply to sole traders)	<input type="checkbox"/> Yes, I already have this <input type="checkbox"/> I do not currently have but I am willing to obtain <input type="checkbox"/> No, I do not have and I am not willing to obtain <input type="checkbox"/> Not applicable – I am a sole trader
40.	Public Liability Insurance	<input type="checkbox"/> Yes, I already have this <input type="checkbox"/> I do not currently have but I am willing to obtain <input type="checkbox"/> No, I do not have and I am not willing to obtain
41.	<p>Please provide copies of your current insurance certificates relating to the requirements above.</p> <p>The documents/evidence should include the name of the insurers, policy numbers, expiry dates and limits for any one incident and annual aggregate caps and the excesses under the policies.</p> <p>or</p> <p>A letter from your insurance broker confirming you will be able to obtain the relevant insurance.</p>	

Conflict of interest

42.	Are there any actual or potential conflicts of interest between the Authority and the Bidder?	<input type="checkbox"/> Yes <input type="checkbox"/> No
43.	If the answer to the above question is 'yes', please provide details and explain how you intend to avoid any such conflicts.	

Health and Safety

Please note that this section should only be completed if you are not currently on the West Dunbartonshire Council approved contractors register. This can be verified by contacting Struthers Symington.

44.

CONTRACTOR H&S PRE-QUALIFICATION QUESTIONNAIRE

A score of **60%** or higher is required to pass this part of the questionnaire – a failure to achieve **60%** will result in exclusion from any further part in the Tender exercise.

(Tenderers should note that Tenderers that are Compliant or Accredited with a nationally recognised body such as the Contractors Health and Safety Assessment Scheme (CHAS), Safe Contractor or other similar Safety Schemes in Procurement (SSIP) registration will receive a score of 70%. This will be subject to any matters disclosed in questions 4,5 or 6 which we would ask you to answer. A copy of the letter of acceptance, certificate or other verification issued by the assessment body is required. We will then only need sample copies of employees CSCS cards (or similar) and the written references where you intend to operate as a principal contractor.)

Please outline nature and type of work or service your company can provide for the Council. Continue on a separate piece of paper if necessary

How many people do you employ?

Health and Safety continued

Introduction

This questionnaire includes our scoring for the key questions, allowing you to consider the emphasis given to the various questions. This desktop exercise is designed to assess your H&S management systems. It does not evaluate performance on-site.

As a result it may be necessary to visit your headquarters or undertake a site assessment to determine if the systems described in the submission are being put into practice.

Mandatory

The questionnaire contains a number of questions to which the answers are mandatory. Please ensure that these have been answered and that all documentation requested is supplied and included at the time of submission. Failure to do so will result in your submission being rejected.

Mandatory questions are shown in bold print and highlighted as this

Rejection

Where we have notified you that your submission has been rejected you may wish to review your "Health and Safety Management System", organisation and arrangements in line with the comments provided and then re-submit your application within two months. If no re-application is received within this period it will be assumed that you no longer wish your application to proceed.

CSCS

The Council supports the HSE initiative regarding Construction Skills Certification Scheme (CSCS), passport or other similar schemes. This will be used as a benchmark for determining the competence of your employees in accordance with CDM (Stage 1 assessment). Therefore, when applying for inclusion on our "Pre-qualified List" it is mandatory that your workforce be accredited via such a scheme. This is important, not only for trades persons, but also for those who supervise or manage construction activities on your behalf.

Note : If you are a specialist contractor e.g. electrical, gas, asbestos etc, and undertake work within a controlled internal environment (non site work - housing or public buildings) then evidence must be provided that the company is a member of a relevant professional body, and outline their in-house training programmes and CPD. In such instances membership of a skills certification scheme may not be necessary, although it is recommended. Details of Health and Safety Schemes and Professional Bodies are provided for your information and guidance.

Are your employees accredited via a passport scheme appropriate for your work activity? *

YES

NO

* Please give details of the scheme(s) used within your company and the level of participation. **Please also provide sample copies of the certification issued to you employees.** (Approximately 3 of each type will suffice e.g. CSCS, SNIJIB, ECS etc) **Should you answer No; your submission will be rejected on the grounds that it does not meet the initial essential criteria of pre-qualification.**

ASBESTOS

Employees of most companies who are doing any construction work in buildings are at risk of exposure and should therefore

Mandatory

have a sound understanding of the risks they face.
Please provide evidence of your instructions to employees on what they must do if they discover asbestos or suspected asbestos while at work.

Satisfactory	
Yes	No

1. Please provide a copy of your Company Safety Policy and arrangements document which is mandatory for companies with 5 or more employees.

Where your company employs less than 5 people we would expect some form of mission statement or outline policy similar to that shown in HSE's Guidance Note [An introduction to health and safety \(indg259\)](#)

The following table will be used to produce a possible maximum score of 16 for question 1

TABLE 1	Key points for question 1	
		Score Awarded
1. Clear statement of policy: signed and dated.		
2 Responsibilities: management and employee clearly defined. effective communication systems i.e. safety committee, others		
3. Arrangements: planning/implementation. risk assessment/controls emergency procedures monitoring / auditing		
4. Indication of policy review system:		
Section Total Question 1	16	

Satisfactory

2.	Do you record all accidents in accordance with RIDDOR? <i>Please provide evidence.</i>		Mandatory	
	Yes	No	Yes	No

3. Identify how the results of accident / incident investigations are communicated to management and employees?

Yes	No
	If not deduct 2 points

4. Has your company been subject to any legal actions, including prosecution, HSE / LA enforceable notices (prohibition or improvement)?

TABLE 2	Key points for question 4
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	Y/N		Score Awarded
4.1 For each legal action declared, Prohibition Notice served, 5 points		-5	
4.2 For each Improvement Notice 4 points will be deducted.		-4	

5. Have you had any major reportable accidents or dangerous occurrences over the past 3 years? <i>2 points may be deducted per incident, taking account on the information provided and actions taken to prevent recurrence.</i>		-2	
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6. Has any Company Director been disqualified, under the Company Director Disqualification Act 1986 as a result of an H&S offence?		-5	
--	--	----	--

If YES to questions 4, 5 & 6 enter details below, including any measures or improvements made to your Health and Safety Management Systems or Work Practices. This will assist when assessing your application. If significant improvements have been made to your Health and Safety Management Systems and Work Practices, then consideration will be given to a review of the above scoring.

Please note that checks will be made on the HSE Enforcement / Prosecution Website. Any undeclared actions will cause the assessment of to your submission to be rejected.

7. Please provide sample copies of completed Risk Assessments for work you would expect to carry out for the Council, including those for high risk activities e.g. Asbestos, COSHH, Lead, Manual Handling, Noise, PPE, Work Equipment, Work at Height, Vibration, and your general work activities.	Mandatory See table 3
---	---------------------------------

Points will be awarded for each stage identified in the risk assessment

TABLE 3	
	Score Awarded
1. Identification of Hazards	
2. Those who may be affected	
3. Evaluation of level of risk	
4. Controls to be implemented	
5. Indication implementation and review system	
Section Total Question 7	10

8. Please provide sample copies of completed Safe Systems of Work developed from the sample risk assessments provided for activities you would expect to carry out for the Council, including those for high risk work activities?	Mandatory see table 4
---	---------------------------------

Points will be awarded for each stage identified in the risk assessment / SSoW

TABLE 4	
	Score Awarded
1. Description of Hazards / Risks	
2. Statement of how work will be carried out	
3. The type and need for appropriate PPE	
4. Procedures for an emergency	
5. Appropriate training identified	
Section Total question 8	5

9. Provide evidence of a procedure for the inspection and maintenance of tools, plant and/or equipment that will be used?	5
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10. Do you transfer or receive hazardous waste as part of your work activity? If YES please provide a copy of your current SEPA / Environment Agency Certificate	Mandatory if YES
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11. Please identify the Director / Manager / Owner within your Company who is the nominated person responsible for Health & Safety matters?	Mandatory
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12. Who is your “competent person” appointed to meet the requirements of regulation 7 of the Management of Health & Safety at Work Regulations and what is their position in the company?	Mandatory
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	Possible Max	Score Awarded
13. Does the competent person named above have formal Health & Safety training? <i>Maximum of 6 points awarded based on details of qualification / training, supplied.</i>	6	

14. Do you employ an external Consultant to provide Health and Safety assistance? If the answer is yes please provide details of the nature and extent that your company has hired them and details of their qualification / training. <i>Maximum of 6 points awarded based on details of qualification / training and their role within the company supplied.</i>	6	
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Please note that a satisfactory answer is required from either or both questions 13 and 14

15. Identify how Health & Safety factors are used in the selection criteria for new employees? <i>Points awarded based on details supplied</i>	3	
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16. Are medical examinations a part of your Company’s recruitment process? Please provide details of any scheme or the reasons why you do not feel it is required.	2	
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17. Provide details of your Health & Safety Training programme, including induction courses for new employees and other H&S topics.	Mandatory see table 5
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Points awarded based on details supplied

TABLE 5	
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		Score Awarded
1. Policy and Emergency procedures		
2. Risk assessment		
3. The type and need for appropriate PPE		
4. Safe systems of work		
5. Other needs e.g. manual handling, electricity, noise, HAVS, COSHH etc.		
Section Total question 16		5

		Yes / No	
		Possible Max	Score Awarded
18.	Are Health & Safety factors used in employee performance appraisal? <i>Points awarded based on details supplied</i>	4	

19.	Do you have an in-house Safety Manual? Is it issued to all personnel? <i>If it is issued to all personnel award maximum score 4. If it is not issued to all personnel points will be awarded on the basis of the details supplied.</i>	4	
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20.	Do you have, or have access to specialist Health & Safety facilities? e.g. Library, C.D. ROM facility or other similar resource. <i>Points awarded based on details supplied</i>	4	
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21.	Do you promote Health & Safety behaviour through:		
	Formal Issue	1	
	Posters	1	
	Notice Boards	1	
	Videos / DVD / Interactive training	1	

22.	Please provide details of any membership of an industry, trade or safety organisation? <i>Maximum of 2 points based on answer</i>	2	
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		Yes / No	
		Possible Max	Possible Max
23.	Has your Company received any award for Health & Safety performance or achievement? <i>Maximum of 2 points based on answer</i>	2	

24. Do you hold regular meetings on Health & Safety matters?

4	
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1 point awarded for each type of meeting up to a maximum of 4. Please provide details relating to each.

Persons Attending	Type	Frequency
Board of Directors		
Senior Management		
Safety Committee		
Safety / Employee Representatives		

Where these groupings do not exactly match your company structure please identify what H&S meetings do take place.

25. Welfare Provision

Your company should have satisfactory arrangements which ensure adequate welfare is in place before people start work on premises, sites or lands.

Provide evidence of your arrangements and their implementation which could include details of the type of welfare facilities provided on previous projects.

Satisfactory	
Yes	No
	If not deduct 2 points

Please provide documentary evidence of the above.

26. State how you monitor the health and safety performance of your organisation **Mandatory**
See table 6

TABLE 6		Possible Max	Score Awarded
1. Audits			
2. Site Inspections			
3. Analysis of Accident Trends/Statistics			
4. Insurance Claims / or other			

Maximum of 8 points awarded based on details supplied

8

Operating as a Principal Contractor / Sub Contracting elements of the work

27. Do you wish to act as a Principal Contractor on behalf of WDLT?

Yes

No

You must be pre-qualified for this purpose and provide detailed evidence of any such contracts. **Three written references must be provided from previously employing organisations not linked in any way to this Council.**

We require actual references. Should you only provide referee details this part of the submission will be ignored whereby your company will not be in a position to sub-contract any elements of the work. The references from the employing organisations will be checked to see if they indicate that your organisation is competent to address health and safety issues for the types of contracts you wish to be pre-qualified for, including the development of suitable Construction Phase plans. The requirements of the CDM Regulations shall be the benchmark for this purpose. In the event that references are not provided or are deemed unsatisfactory the organisation will not be awarded work as a Principal Contractor.

Satisfactory

Yes

No

If you have indicated that you do not operate as a Principal contractor and do not sub-contract any work offered by the Council ignore question 28. Doing so will not adversely affect your score.

28. If you have indicated that you wish to act as a Principal Contractor state how you select your sub contractors and ensure they comply with Health & Safety requirements.

See table 8

Score if YES to Q27

TABLE 8

1. Vetting procedures

Score Awarded

2. Reference to Management Regs – co-operation/co-ordination

3. Appointment of co-ordinator		
4. Means of communication between contractors – meetings etc.		
5. Cognisance of other needs in respect of nature of works / or other e.g. CDM		
Section Total	10	

ECONOMIC AND FINANCIAL STANDING (Pass/Fail)

<p>45.</p>	<p>Please provide one of the following:</p> <p>a. A copy of your audited accounts or equivalent for the most recent two years, along with details of any significant changes since the last year end.</p> <p>or</p> <p>b. A statement of your organisations turnover; profit and cash flow for the most recent full year of trading or where a full year of trading has not been completed the same information for the period applicable. NOTE if this information is not available in an audited format please provide an end of period balance sheet or make the response specified below.</p> <p>or</p> <p>c. If you are unable to provide the information requested above, please provide additional information and documentation that will give the Authority the assurance that you are capable of carrying out any subsequent awarded contract. For example, a statement of your organisation's cash flow forecast for the current year and a letter from your bank outlining the current cash and credit position or other alternative means of demonstrating financial standing.</p> <p>In addition, where the bidding organisation is a subsidiary in a group, responses to this question are also required for the organisation with overall responsibility for the group.</p>	
<p>46.</p>	<p>Where a consortium or association is proposed, responses to this question are also required for each member of the consortium. containing all relevant documents.</p>	

Your financial accounts and supporting information should be in English and in UK Sterling. If the original documents are not in English, please provide copies of the originals and a certified translation into English.

If the sums in the accounts are not expressed in UK Sterling then copies of the original accounts, shall be provided together with a UK Sterling rate equivalent copy utilising the pound buys exchange rate applicable on the date of issue of the ITT.

47.	Please use this space if you would like to provide any additional information regarding the economic/financial standing of your organisation. For example provide a statement explaining why the organisation was not in net profit after tax in either of the reported financial years.	
48.	<p>In the event that analysis of your financial position determines that additional measures are necessary in order to provide adequate assurance of your financial strength, would you be willing to provide either a parent company guarantee or a bank guarantee?</p> <p>If you cannot provide any of the assurances as detailed above, and it is determined by the Authority that your financial strength is not adequate then your company may not pass the financial evaluation. If you can provide the assurances as detailed above, the Authority may explore these options with you before determining whether your company can be taken forward in this procurement exercise.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

Note: Failure to disclose information relevant to this section or serious misrepresentation in relation to the information disclosed may result in your exclusion from this competition or the termination of any contract that may be awarded to you.

Stage 2 - Evaluation Award Criteria

TECHNICAL AND PROFESSIONAL CAPABILITY (Scored - 20%)

Bidders are required to provide evidence of having the necessary capacity and capability to deliver the requirements of the contract.

Bidding organisations may demonstrate their experience in delivering goods services or works similar to the current requirement by using examples from:

- Within their own organisation (bidders may rely on the experience of personnel that they intend to use to carry out the current requirement, even if that experience was gained whilst working for a different organisation)
- Other consortium members (where a consortium bid is being proposed)
- Named sub-contractors

Please provide two examples below:

49.	<p>Please provide your first relevant example that demonstrates your organisation's, or, where relevant consortium members and / or named sub-contractors experience in delivering similar goods or services to the requirements of this procurement exercise.</p> <p>For goods and services contracts your examples must be from within the last three years.</p> <p>The information you provide should cover the following areas –</p> <ul style="list-style-type: none"> - a description of the goods or services delivered, - contract value & dates, - previous or current customer details, - details of where you have been able to demonstrate added value through the adoption of innovative solutions. <p>Either use the space provided or attach a document to your response, which should be no longer than 2 pages of A4.</p>	
50.	<p>Please provide your second relevant example that demonstrate your organisation's, or, where relevant, consortium members and / or named sub-contractors experience in delivering similar goods or services to the requirements of this procurement</p>	

	<p>exercise. For goods and services contracts your examples must be from within the last three years. The information you provide should cover the following areas -</p> <ul style="list-style-type: none"> - a description of the goods or services delivered, - contract value & dates. - previous or current customer details, - details of where you have been able to demonstrate added value through the adoption of innovative solutions. <p>Either use the space provided or attach a document to you response, which should be no longer than 2 pages of A4</p>	
51.	<p>In relation to the 2 examples above please attach confirmation that the requirements were delivered successfully e.g. acceptance/completion certificates or customer's written declaration (if available).</p>	
52.	<p>Please provide a statement of the professional and technical skills available within your organisation, or, where relevant, consortium members and / or named sub-contractors in relation the subject matter of this procurement exercise. Please refer to the information in the "Scope of Requirements", section 2 of this ITT, for more information.</p> <p>Guidance The Buyer will use the information you provide to evaluate whether your organisation consortium members and / or named sub-contractors have the required professional and technical skills to deliver the requirement.</p>	
53.	<p>Please provide a statement of the technical resources such as the tools, plant, facilities and technical equipment available to your organisation, or, where relevant,</p>	

	<p>consortium members and / or named sub-contractors in relation to the delivery of this contract. Please refer to the information in the “Scope of Requirements”, section 2 of this ITT, for more information.</p> <p>Guidance The Buyer will use the information you provide to evaluate whether your organisation, consortium members and / or named sub-contractors have the required technical resources to deliver the requirement.</p>	
54.	<p>Please confirm whether or not your organisation, consortium members have:</p> <ul style="list-style-type: none"> - defaulted on the delivery of a contract within the last 3 years (goods and services) ? - had a contract cancelled, or not renewed, for failure to perform within the last 3 years (goods and services) ? <p>If any of the above applies please provide an explanation of the action you have taken to prevent a re-occurrence.</p> <p>Guidance The buyer will use the information to determine whether you have a successful record of delivery.</p>	

QUALITY MANAGEMENT (Scored - 20%)

55.	Explain how your organisation will ensure the quality of equipment and how this will meet the specification asked for.	
56.	Explain how you will manage communications in order to forge a long term working relationship and to ensure continued delivery of services that meet the needs of customers and staff.	
57.	Does your organisation operate a quality management system certified to an International, European or equivalent standard (e.g. BS EN ISO 9001)? If you answer yes please attach a copy of the certificate.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>If you have been able to provide a copy of your organisation's certification to international, European or equivalent standard, (e.g. BSEN ISO9001) then, <u>you are not required to answer any of the remaining questions (below) in this section.</u></p>		
58.	<p>If you have a documented policy and organisation for quality management please attach a copy with your ITT response.</p> <p>Guidance Your policy should set out your organisation's responsibilities for quality management, be able to demonstrate that your organisation has and implements a quality management policy that is authorised by the Chief Executive or equivalent and periodically reviewed at a senior management level. The policy should be relevant to the nature and scale of the work to be undertaken and set out responsibilities for quality management throughout the organisation.</p>	
59.	Please describe your organisation's arrangements for ensuring that your quality management, including the quality of output and general performance, is effective in reducing/ preventing incidents of	

	<p>sub-standard delivery.</p> <p>Guidance You should be able to demonstrate that your organisation keeps copies of documentation setting out quality management organisation and procedures that meet currently agreed good practice. These should include the arrangements for quality management throughout the organisation. They should set out how your organisation will carry out its policy, with a clear indication of how the arrangements are communicated to the workforce.</p>	
60.	<p>Please describe your organisation's arrangements for providing your workforce with quality related training and information appropriate to the type of work for which your organisation is likely to bid?</p> <p>Guidance You should be able to demonstrate that your organisation has in place and implements training arrangements to ensure that its workforce has sufficient skills and understanding to discharge their various responsibilities. These should include a programme of training that will keep the workforce up to date with required knowledge about quality related issues, including copies of job profiles; training manuals and records.</p>	
61.	<p>Please describe your organisation's procedures for periodically reviewing, correcting and improving quality performance.</p> <p>Guidance You should be able to demonstrate that your organisation has a system for monitoring quality management procedures on an on-going basis. Your organisation should be able to provide evidence of systematic, periodic review and improvement of quality in respect of output and general performance.</p>	

62.	<p>Please describe your organisation's arrangements for ensuring that your own suppliers apply quality management measures that are appropriate to the work for which they are being engaged.</p> <p>Guidance You should be able to demonstrate that your organisation has arrangements for monitoring supplier's quality management measures and ensuring that quality performance appropriate for the work to be undertaken is delivered throughout the whole of your organisation's supply chain.</p>	
63.	<p>How does your organisation deal with complaints?</p> <p>Guidance You should provide details of how your organisation maintains records of any complaints received and how corrective measures are carried out to prevent reoccurrence.</p>	

SUSTAINABILITY (Scored - 5%)

Questions in this section should be answered with particular consideration to Section 2, the Scope of Requirements.

64.	<p>Does your organisation operate an environmental management system certified to International, European or equivalent standard (e.g. ISO 14001 or EMAS). If so please attach a copy of the certificate with your ITT response.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
65.	<p>Please describe your organisation's environmental emergency response procedures.</p> <p>Guidance You should describe the preparedness and response procedures for potential accidents and emergency situations that give rise to significant environmental impacts, e.g. hazardous substances spill control etc.</p>	
66.	<p>If you have a documented policy</p>	

	<p>and organisation for the management of environmental issues please attach a copy to the end of this questionnaire.</p> <p>Guidance You should provide evidence that you or your organisation has an environmental management policy authorised by the Chief Executive, or equivalent, and regularly reviewed. The policy should be relevant to the nature and scale of the work and set out the responsibilities for environmental management throughout the organisation.</p>	
67.	<p>Please describe your organisation's arrangements for ensuring that your environmental management procedures are effective in reducing/ preventing significant impacts on the environment. Please include details of your travel and fuel management plans, any carbon offset arrangements and any reduction targets that your organisation has in place.</p> <p>Guidance You should provide evidence that your organisation's environmental policy implementation plan provides information as to how the organisation aims to discharge relevant legal responsibilities and provides clear indication of how these arrangements are communicated to the workforce, in relation to environmental scope matters including: sustainable materials procurement; waste management; energy management. This should include the arrangements for responding to, monitoring and recording environmental incidents and emergencies and complaints.</p>	
68.	<p>Please describe your organisation's arrangements for providing employees with training and information on environmental</p>	

	<p>issues.</p> <p>Guidance You should demonstrate that your organisation has in place and implements, training arrangements to ensure that its workforce has sufficient skills and understanding to carry out their various duties. This should include a programme of refresher training that will keep the workforce updated on relevant legal requirements and good environmental management practice.</p>	
69.	<p>Please describe how your organisation checks, reviews and where necessary improves your environmental management performance and the environmental impact of your organisation.</p> <p>Guidance You should demonstrate that your organisation has a system for monitoring environmental management procedures on an ongoing basis and for updating them at periodic intervals. You should give details of the procedures in place to access and deal with environmental risks.</p>	
70.	<p>What procedures do you use to ensure that waste is minimised and managed effectively? You should give details of your procedures for dealing with waste (e.g. waste management plans, waste segregation, recycling etc.).</p>	
71.	<p>Please provide details of your organisation's arrangements for ensuring that any suppliers you engage apply environmental protection measures that are appropriate to the work for which they are being engaged.</p> <p>Guidance You should describe your organisations procedures for monitoring supplier's environmental</p>	

	management arrangements and ensuring that environmental performance appropriate for the work to be undertaken is delivered throughout the whole of your organisations supply chain.	
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SERVICE DELIVERY (Scored - 50%)

72.	Please describe your online faults procedure including response time, out of hours support.	
73.	Please give details of the first and ongoing preventative, proactive equipment inspections and maintenance programmes following delivery and installation	
74.	In order to enhance the customer's experience, please provide details of what training you can offer the following staff – sales, front line, fitness and managers. As a minimum please include details of training on how to use and maintain the equipment, sales, marketing, communications and customer care. You should look to provide training opportunities for a three year period. Please also provide details of who will carry out the training.	
75.	Please provide details of what marketing initiatives you can offer to enhance the service from pre installation and for a three year period.	
76.	Please provide details of how you will assist to create a brand image for the gyms to distinguish it from its competitors	
77.	Please provide details of your delivery timescale from time of receipt of order	

COMMUNITY BENEFITS (Scored - 5%)

78.	Please describe what community benefits you will provide to WDLT in the delivery of this contract.	100%
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SECTION 4 – PRICING SCHEDULE

Prices must be submitted **on the Pricing Schedule attached at Appendix 4** of this document (document reference “1314-59 Appendix 4 of the ITT”).

All prices quoted should be inclusive of any and all charges likely to be incurred by the supplier in the completion of this project, including administrative/clerical support costs and overheads.

Prices must be broken down to reflect all the component parts required to make up the service required by this tender.

Please note that variant bids should only be included on the Pricing Schedule if this Invitation to Tender specifically requests such bids.

Please also provide information on any potential areas for maximising value for money. Items could include:

- Early invoice settlement terms
- Consolidating invoices

West Dunbartonshire Leisure Trust pay by BACS. Please provide the details below:

Bank Account Number	
Sort Code	

SECTION 5 - TERMS AND CONDITIONS OF CONTRACT

TERMS AND CONDITIONS FOR SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF GYM EQUIPMENT, WITH TRAINING AND MARKETING SUPPORT PROVISION, AND A 5 YEARS MAINTENANCE SERVICE TO WEST DUNBARTONSHIRE LEISURE TRUST

Conditions of Contract

1.1 Definitions

In the Conditions of Contract , save where the context otherwise requires, the following expressions shall have the meaning hereby assigned to them:-

(a) '**Client Officer**' means those persons designated as such for purposes of the Contract Documents by the Leisure Trust and notified to the Supplier from time to time by the Leisure Trust in writing. In the event of a designated Client Officer not being notified to the Supplier "Client Officer" will be taken to mean the Leisure Trust.

(b) '**Conditions**' means the conditions referred to in the Contract and any supplementary conditions and modification thereof;

(c) '**Contract**' means the Conditions of Contract, entered into between the Supplier and the Leisure Trust incorporating the Contract Documents;

(d) '**Contract Documents**' means the Tender Documents with any subsequent variation or amendments thereto;

(e) '**Contract Standard**' means such standard as complies in each and every respect with all relevant provisions of the Contract and in accordance with the acknowledgment that the Leisure Trust is relying entirely on the expertise and knowledge of the Supplier to supply the goods and services and to the extent that no criteria are stated in the Contract the standard is to be to the entire satisfaction of the Leisure Trust having regard to good standards of contract performance and without prejudice to the foregoing generality means in relation to the performance of the Contract:-

- a) in accordance with best practice for the manner in question and in a good faith manner free from dishonesty and corruption;
- b) in accordance with all relevant provisions of the Contract and the Specification hereof;
- c) in compliance with all relevant Acts of Parliament, statutory regulations or orders and codes of practice in operation from time-to-time and including but without prejudice to the generality;
 - i) The Standing Orders and Schedule of Delegated Powers and Policies of the Leisure Trust;
 - ii) Insofar as relevant to this Contract all legislation pertaining to or otherwise affecting the Leisure Trust.

(f) '**Council**' means West Dunbartonshire Council established under the Local Government Etc (Scotland) Act 1994 having their Headquarters at Garshake Road, Dumbarton;

(g) '**Delivery Schedule**' means the delivery schedule referred to at Clause 1.7;

(h) '**Gym Equipment**' means the means gym equipment and related goods as set out in the Specification and shall include each and every component part (including any replacement parts provided by the Supplier) record, manual and handbook manufacturer's warranty and equipment registration documentation; equipment ;

(i) "**Leisure Trust**" means the West Dunbartonshire Leisure Trust, a company limited by guarantee (company number SC 413707) having its registered office at Alexandria Community Centre, Main Street, Alexandria, G83 0NJ;

(j) '**Month**' means a calendar month;

(k) "**Maintenance Services**" means maintenance services set out at Appendix 4 of the Invitation to Tender;

(l)" **Marketing Services** " means the marketing services to be provided to the Leisure Trust , more particularly set out in the Specification;

(m) "**Price** " means the Supplier's prices for the supply delivery, and installation of the Gym Equipment , the Maintenance Services, the Marketing Services and the Training Services, as set out in the Supplier's price submission set out in the Tender Submission;

(n) '**Specification** " means the specification of the gym equipment as set out at Appendix 4 of the ITT ;

(o) "**Supplier**" means the Tenderer appointed by the Leisure Trust to perform the Contract and shall include its staff or anyone with its authority or under its instructions;

(p) '**Tender Documents**' means the Invitation to Tender (the "ITT"), Conditions of Tender and any other accompanying documents submitted by the Tenderer relating to the Contract;

(q) '**Tenderer**' means the person(s) or company (companies), partnership(s) or other body (bodies) submitting tenders to the Leisure Trust for the Leisure Trust's requirement and shall include its staff or anyone with its authority or under its instructions;

(r) "**Training Services**" means the delivery of face to face training of staff as set out at Appendix 4 of the ITT;

(s) '**Variation**' means a variation in the provisions of the Contract made by notice given by the Leisure Trust;

(t) '**Week**' means 7 consecutive days;

(u) The masculine includes the feminine and in the case of a limited company the indefinite article and the singular includes the plural and vice versa;

(v) A reference to an Act of Parliament or any other order, regulation, statutory instrument or the like shall at the option of the Leisure Trust include a reference to any amendments or re-enactment of the same;

(w) Stipulations as to time of payment are not the essence of this Contract. Other stipulations as to time are of the essence of this Contract.

1.2 Competence of Contract Provisions

If the Contract, or any part thereof shall become or shall be declared by any Court of competent jurisdiction to be invalid or the judgement of such court shall in any way impair or affect any provision then, insofar as they can be validly adhered to, all remaining provisions shall remain in full force and effect and this provision shall be entirely without prejudice to any powers given to an Arbiter in terms hereof.

1.3 Law of Scotland

The Contract will be governed by the Law of Scotland

1.4 Capacity to Contract

The Supplier warrants to the Leisure Trust that there is no inhibition, restriction or prohibition which in any way affects the capacity of the Supplier to enter into this Contract. In the event of any such inhibition, restriction or prohibition existing, it will be in the option of the Leisure Trust to determine the Contract and to have the Supplier indemnify the Leisure Trust in full any loss resulting to the Leisure Trust thereof.

1.5 Estimated Quantities

The Supplier acknowledges that the Specification gives an estimate of the likely amount of the Gym Equipment required by the Leisure Trust. The Prices submitted by the Supplier in its Tender Response will be binding on the Supplier, but a purchase order for the goods or services in question will be required to be issued by the Leisure Trust to the Supplier, to create a legally binding requirement on the Leisure Trust. The Leisure Trust may, notwithstanding the foregoing generality, require the Supplier to supply a selection of the goods or services listed, less than all the items listed, which may be additional or zero categories of the relevant equipments listed, as they may require. The Leisure Trust may, in exceptional circumstance, where necessitated by damage, destruction, loss or unforeseen obsolescence of equipment from the said or materially similar Specification, require the supply of alternative equipment from the types noted in the Contract Documents.

Declaring further however, that any such supply due to exceptional circumstances will not be as such as to materially affect the nature and overall value of the Contract. The terms and conditions on which such all Gym Equipment is to be or may be supplied (both to the upper limit of said range and in exceptional circumstances above noted) will, unless agreed between the parties, be on the same terms and conditions.

1.6 Variation of Contract Conditions

Any condition of sale entered into by the Supplier or incorporated on any Delivery/Receive Note or Invoice or equivalent submitted to the Leisure Trust

shall not be binding on the Leisure Trust unless such conditions have been accepted in writing by the Leisure Trust, with specific reference to the Contract.

1.7 Delivery Schedule, Orders and Delivery of Goods

The parties hereto will, prior to the issue of any order, agree a Delivery Schedule incorporating delivery times for each item which the Leisure Trust intends to acquire initially from the Supplier, all in accordance with the Contract.

It is a material and essential condition of the Contract that the Supplier delivers all items of Gym Equipment within no later than 8 weeks of the date of the Leisure Trust's order for the said equipment. In the event of any failure to deliver to the Leisure Trust an order of Gym Equipment within the said period, will entitle the Leisure Trust to apply terms of Clause 1.11 hereof (Liquidated damages).

Upon the Contract being entered into, the Gym Equipment will be purchased by the Leisure Trust only in response to an order issued by the Client Officer. Such orders will specify the time and place or places for delivery of each item of Gym Equipment all in line with the Delivery Schedule to be agreed between the parties in line with the Supplier's Tender Submission.

Delivery of the Gym Equipment, properly packed and secured where stipulated shall be made by the Supplier at the time and place or places and in the manner specified in by the Leisure Trust. The Supplier acknowledges that the Leisure Trust shall be entitled to specify which premises and at what time (within normal business hours) within the West Dunbartonshire geographical area the Gym Equipment shall be delivered, at no additional costs to the Leisure Trust.

The Gym Equipment shall, however, remain at the sole risk of the Supplier until delivered to, installed and accepted by the Leisure Trust. Title to the Gym Equipment shall pass to the Leisure Trust on delivery and acceptance, following satisfactory installation and testing by the Leisure Trust (or if for any reason payment is made for the Gym Equipment prior to delivery and acceptance, title (but not risk) shall pass to the Leisure Trust on payment) All goods and/or materials delivered to Leisure Trust premises must be accompanied by a Receive/Delivery Note. Such documents shall clearly state a description of the goods delivered, the quantity of each item and the Leisure Trust's official order number. Invoices bearing all the aforesaid information must be submitted in accordance with instructions laid down in the Contract.

If any items of Gym Equipment, in delivery are found to be unsatisfactory, either prior to, or following installation and testing (as to which matter the Leisure Trust shall be the sole judge), the Leisure Trust shall be entitled to reject delivery of the item, and either require the Supplier to deliver a replacement item, within 14 days, or cancel the order entirely. Any failure to deliver a satisfactory replacement item within the said 2 week period shall entitle the Leisure Trust to apply terms of Clause 1.11 hereof (Liquidated damages).

1.8 Provision of Maintenance Services , Marketing Services and Training Services

For a period of 5 years from, [] 2013 until [] 2018, the Supplier shall provide to the Leisure Trust with the Maintenance Services , Marketing Services and the Training Services, in accordance with the Leisure Trust's requirements, for the Price, and all to the Contract Standard. In relation to the Maintenance Services the Supplier will to respond to and diligently pursue the relevant maintenance activity within 48 hours of request from the Leisure Trust

1.9 Unauthorised Supply of Goods or Services

Suppliers must not issue, deliver, or supply in any manner any goods nor perform any services to the Leisure Trust to or for any department, officer, servant or agent for the Leisure Trust without first receiving an official order for such goods or services issued by the Client Officer of the Leisure Trust. The Leisure Trust shall not be liable for the costs of any goods or services issued, delivered, supplied or performed as the case may be, if the goods or services are not covered by the prior issue of an official order signed by the Client Officer.

1.10 Supplier's Liabilities

The Supplier shall be liable for (i) any additional costs incurred by the Leisure Trust, (ii) any damage to property and (iii) any injury to person or persons, arising through or in consequence of the Supplier's negligence, or that of their employees, representatives, or agents whomsoever, in supplying and delivering goods or services to the Leisure Trust, or a breach or failure of their duty to do so. And the Supplier shall free and relieve the Leisure Trust from any expense the Leisure Trust might incur and from any claim made upon the Leisure Trust in connection thereof.

1.11 Liquidated Damages

- a) Subject to Paragraph (b) below if the Supplier fails to deliver the Gym Equipment or any portion thereof within the delivery period of 10 weeks set out, or within any extension of any such period or periods agreed by the Leisure Trust (the final day of which period or periods is referred to in this Condition as the '**Delivery Date**'), there shall be deducted from the price payable by the Leisure Trust, a sum of £107 per item of equipment machine, per week of such delay , being the reasonably anticipated loss of income to the Leisure Trust in the failure to have an operational items available for use by the Leisure Trust. In relation to the Maintenance Services any failure to respond to and diligently pursue the relevant maintenance activity within 48 hours of request from the Leisure Trust , will entitle the Leisure Trust to a sum of £107 per item of equipment machine, per week of such

delay caused by a failure to respond and diligently pursue any such matter.

- b) Should the Gym Equipment or any portion thereof not be delivered by the Delivery Date, the Leisure Trust may, without prejudice to any other remedies open to the Leisure Trust, by notice to the Supplier determine the Contract:-
 - i) in respect of the item or items of Gym Equipment which have not been delivered within three weeks of the Delivery Date; or
 - ii) in respect of the whole Contract and return all Gym Equipment already delivered to the Supplier.

In the event of the Leisure Trust determining the whole Contract as aforesaid, the Supplier shall immediately repay to the Leisure Trust all monies already paid by the Leisure Trust to the Supplier in respect of the Contract, together with any sums due in respect of Liquidate Damages and all other sums due to the Leisure Trust otherwise arising. If the Leisure Trust does not terminate the Contract in whole or in part, at the Delivery Date as aforesaid, the Leisure Trust reserves to do so, and to recover all sums owing as aforesaid, at any time after three weeks from the Delivery Date if the Supplier continues to fail to make delivery of the Gym Equipment as aforesaid.

- c) Notwithstanding the availability of alternative remedies, the Leisure Trust will be entitled to receive Liquidate Damages from the Supplier up to the date of the service of any notice in terms of the preceding paragraph, and thereafter the Supplier will be liable to the Leisure Trust for all costs incurred by the Leisure Trust, including, but not limited to, the costs of any alternative sourcing of the Gym Equipment, to include advertising, tendering, documentation, representation and administration associated with such additional processes and will further include any additional cost of the Gym Equipment.

1.12 Failure to Conform

Should the Supplier fail to conform to the terms and conditions of the Contract, the Leisure Trust may, if they think fit, terminate the Contract by giving the Supplier seven days (7 days) notice in writing and enter a Contract with another firm or person. All losses, expenses, costs and charges incurred by the Leisure Trust in this connection shall be a debt due by the original Supplier to the Leisure Trust and may be deducted from any monies in the hands of the Leisure Trust or may be recoverable by legal action.

1.13 Technical Standards and Failure to Conform

All goods and/or materials supplied to the Leisure Trust by a Supplier must conform to the Specification all respects in terms of quality of material used in the goods and/or materials, the design and standard of finish and workmanship. Except in so far as may otherwise be indicated by the Specification, the Gym Equipment shall be strictly in accordance with, in order of preference,

- a) a British Standard implementing a European Standard ('BS EN');
- b) a Common Technical Specification;
- c) a European Technical Approval or;

- d) a British Technical Specification which complies with EU Directives on technical harmonisation,

except when the use of another standard is justified on the grounds of incompatibility, the Leisure Trust agreeing in advance with the Supplier any such exceptions.

Any Gym Equipment supplied to the Leisure Trust which is not in conformity in every respect with the Specification may be rejected by the Leisure Trust by means of the Leisure Trust serving on the Supplier a notice of rejection, within 7 days of receipt of the item in question. The Leisure Trust may obtain a replacement item from another supplier and thereafter recover from the Supplier any additional costs incurred, either by deducting the same from sums due by the Leisure Trust to the Supplier or as a debt. Any such costs are to be paid by the Supplier to the Leisure Trust, within 7 days of demand.

Gym Equipment so rejected after delivery shall be removed by the Supplier at his own expense within eight days of the date of receipt of notification of rejection. In the event of the Supplier failing to remove them within such period as aforesaid, the Leisure Trust shall be at liberty to return the rejected Gym Equipment or any of them to the Supplier, at the Supplier's risk, the cost of carriage and any incidental costs incurred being recoverable from the Supplier.

Gym Equipment rejected under this condition shall be considered as having not been delivered under the Contract, by the Supplier, within the appropriate time for delivery stipulated in the Contract.

Nothing in these conditions, or in any amendment agreed thereto, will exclude the terms of the Sale of Goods Act 1979 as amended. If the Gym Equipment or any part thereof are in the Leisure Trust's opinion unsatisfactory, then notwithstanding provisions of Clause 1.11(b) above the Leisure Trust may, at its own discretion, determine the Contract as a whole or only in respect of the Gym Equipment of which are unsatisfactory.

1.14 Replacement of Rejected Gym Equipment

Where the Leisure Trust has determined the Contract in whole or part under any of the provisions hereof and without prejudice aforesaid, the Leisure Trust may replace all or any of the rejected Gym Equipment by purchasing other Gym Equipment of the same or similar description or by allocating other Gym Equipment of the same or similar description in the possession or control of the Leisure Trust to the purposes for which the Gym Equipment are required and there shall be recoverable from the Supplier the amount by which the aggregate of the cost of purchasing and of manufacturing Gym Equipment in this way and of the value of any article as aforesaid exceeds the amount which would have been payable to the Supplier if they had been delivered in accordance with the Contract.

1.15 Prevention of Corruption

The Leisure Trust shall be entitled to cancel the Contract and to recover from the Supplier the amount of any loss resulting from such cancellation;

- a) if the Supplier shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having forborne to do any action in

relation to obtaining or execution of the Contract or any other Contract with the Leisure Trust or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Leisure Trust or,

- b) if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Supplier) or
- c) if in relation to any Contract with the Leisure Trust, the Supplier or any person employed by him or acting on his behalf has committed an offence under the Prevention of Corruption Acts, or shall have given any fee or reward the receipt of which is an offence under Sub-Section (2) of Section 68 of the Local Government (Scotland) Act 1973, or committed an offence under the Bribery Act 2010.

1.16 Collusion

The Leisure Trust reserves the right to cancel the Contract and to recover from the Supplier the amount of any loss resulting from such cancellation if the Supplier or his representative (whether with or without the knowledge of the Supplier) shall have practised collusion in tendering for the Contract or any other Contract with the Leisure Trust or shall have employed corrupt or illegal practices in obtaining or executing the Contract or any other Contract with the Leisure Trust.

1.17 Determination of Contract

If the Leisure Trust shall at any time during the term of the Contract be desirous of determining the Contract and shall give twenty eight days notice, in writing, under the hand of the Client Officer to the Supplier and the Council, then at the expiration of the twenty eight days after delivery of such notice the Contract, so far as regards any goods and/or materials services to be supplied under the Contract shall in all respects cease and determine.

1.18 Serving of Notice

Any notice, order or instruction to be served on or given to the Supplier shall be deemed to be duly served, given or delivered 48 hours after posting if posted by recorded delivery in a pre-paid letter addressed to him at the address as stated in the Supplier's tender response, or such other address as the Supplier may from time to time, intimate to the Leisure Trust for purposes of this clause.

1.19 Assignment, Sub-Contracting, Etc

The Supplier shall not give, bargain sell, assign, sub-let or otherwise dispose of the Contract or any part thereof or the advantage of the Contract or any part thereof without the previous consent in writing of the Leisure Trust. Any breach hereof shall entitle the Leisure Trust to determine the whole or that part to which the breach relates to or to take any other remedies it may have.

If, after acceptance of the Contract by the Leisure Trust, the Supplier requires or determines to assign the Contract as a whole or any part thereof to a sub-contractor he shall not be free to do so without first receiving the express agreement of the Leisure Trust in writing to such an agreement. The agreement by the Leisure Trust to any assignment of the Contract whether in whole or in part shall not relieve the Supplier of his liabilities under the Contract.

1.20

Bankruptcy or Liquidation

The Leisure Trust may, at any time, by notice in writing, summarily determine the Contract without compensation to the Supplier in any of the following events:-

a) If the Supplier, being an individual, or where the Supplier is a firm, any partner in that firm, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors or shall make any conveyance or assignment for the benefit of his creditors or shall purport to do so if in Scotland he shall become insolvent or not our bankrupt or any application shall be made under any Bankruptcy Act or EU equivalent for the time being in force for sequestration of his estate or a Trust Deed shall be granted by him on behalf of his creditors.

or;

b) If the Supplier, being a Company, shall pass a resolution or the Court shall make an Order that the Company shall be wound up or an administrator appointed or if a receiver or manager on behalf of a creditor shall be appointed or if circumstances shall arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a Winding Up Order.

Provided always that such determination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Leisure Trust.

1.21

Dispute Resolution

If any question, dispute or difference shall arise between the Leisure Trust and the Supplier in respect of the Contract or any matter arising under or out of the Contract then and in such case such question, dispute or difference shall be referred to a single expert having experience of the matter in question, to be mutually chosen and in the event of failure to agree, on the application of either party, as nominated by the President of the Law Society of Scotland. The expenses of any such expert, shall be allocated as determined by the expert, or failing any such determination, equally by the parties.

1.22

The Contract

The Contract shall be binding on the Supplier in full and no modification, alteration or amendment thereof shall be binding on the Leisure Trust or be effective against the Leisure Trust unless such modification, alteration or amendment has been expressly agreed to and accepted in writing by the Leisure Trust.

1.23

Sufficiency of Information

The Supplier shall be deemed to be satisfied before submitting his Tender as to the accuracy and sufficiency of the rates and prices stated by the Supplier in its Tender which shall (except insofar as is otherwise provided in the Contract) cover all the Supplier's obligations under the Contract and shall be deemed to have obtained for himself all necessary information as to the risks, contingencies and any other circumstances which might reasonably influence or affect the Supplier's Tender.

- 1.24 Copyright
Copyright in the Contract shall vest in the Leisure Trust but the Supplier may obtain or make at its own expense any further copies required for use by the Supplier in performance of the Service.
- 1.25 Change in Circumstances
- a) If any unforeseen fundamental change of circumstances arise of such a kind that it is no longer possible to operate the Contract according to its terms either party may require such minimum variation the Contracts which will enable the Contract to be provided for the remainder of the Contract period in accordance with the fundamental purpose of the Contract. Both parties recognise that as a result of this provision the doctrine of frustration can have only limited effect on the Contract so far as they lawfully can by agreement, exclude it from the Contract.
- b) Without prejudice to generally of the foregoing sub-condition in the event that any part of the Contract shall be or become or be declared void, invalid, illegal or unenforceable or for any reason whatsoever including but without prejudice to the generality of the foregoing by reason of the provision of any legislation or any other provisions having force of law or by means of any decision of any Court or other body or authority having jurisdiction over the parties for the Contract, the parties hereby expressly agree that the remaining parts of the Contract shall continue in full force and effect with much amendments as may be agreed between the parties to ensure that the balance of obligation remains so far as possible the same as under the Contract as at present drafted.
- 1.26 Variation
- a) The Client Officer shall be entitled to issue to the Supplier, and the Supplier shall be obliged to comply with, a Variation containing instructions in writing requiring the Supplier to process all or any of the following:-
- i) to omit, postpone and/or cease to perform any part of the Contract for such period or periods as the Client Officer may direct;
- ii) to perform such additional services other than those contained in the Specification as the Client Officer may reasonably require provided that such additional services shall be the same as or similar to the services under the Contract;
- b) Where the Contract is so varied the value of that part of the Contract so varied shall as appropriate either be deducted from or added to the sums due to the Supplier and the Specification shall be deemed to be amended accordingly.
- c) If required by the Client Officer, the Supplier shall prepare a detailed price estimate of the cost of any proposed variation, including a breakdown of how the costing has been calculated. Such estimate

shall be provided to the Client Officer without charge to the Leisure Trust.

- d) Instructions issued by the Client Officer to the Supplier must be made in writing.

1.27

The Client Officer

The person designated by the Leisure Trust as the Client Officer shall be the duly authorised representative of the Leisure Trust for all purposes connected with this Contract. Any notice, information or communication given or made to the Leisure Trust shall be addressed to the Client Officer.

The Leisure Trust shall forthwith give notice in writing to the Supplier of any subsequent appointment as Client Officer. Until notice of a subsequent appointment shall have been given the Supplier shall be entitled to treat the Client Officer as the person last notified to the Supplier as being the Client Officer.

From time to time the Client Officer may appoint one or more deputies to act for him generally or for a specified period. Immediately any such appointment is made the Client Officer shall give written notice to the Supplier. During periods if he is so authorised deputies shall have the powers of the Client Officer and may be treated in all respects as the Client Officer.

The Leisure Trust shall ensure that the Client Officer or a competent deputy duly authorised to act on its behalf is available for consultation with the Supplier at all reasonable times. The functions, rights and powers conferred by the Contract upon the Leisure Trust shall be exercisable by the Client Officer. The Supplier shall only act on the instruction issued by persons who have been notified to the Supplier as having the capacity to act on behalf of the Client Officer.

1.28

Equality and Human Rights

- a) Equal Opportunity- The Supplier warrants that, to the best of its knowledge and belief, it has complied with all legislative requirements in respect of ensuring equal opportunity in employment .
- b) Discrimination - The Supplier shall not unlawfully discriminate and warrants, to the best of its knowledge and belief, that it has not unlawfully discriminated either directly or indirectly and that it has complied with all legislative requirements in respect of ensuring equal opportunity. Further, the Supplier shall take all reasonable steps to ensure that all employees, agents and subcontractors do not breach any legislation on discrimination
- c) Human Rights Act 1998 - Suppliers shall at all times comply with the obligations which are incumbent upon the Leisure Trust as a “public authority” in terms of the Human Rights Act 1998 (“the 1998 Act”) together with any subsequent amendment or re-enactment thereof and of all secondary legislation made under the 1998 Act or any subsequent amendment thereto or re-enactment thereof. The Supplier shall take all reasonable steps to ensure the observance of this clause by all servants, employees or agents of the Supplier and all Subcontractors engaged by the Supplier. The Supplier shall indemnify the Leisure Trust against all losses, costs, expenses & damages and shall keep the Leisure Trust indemnified against all liabilities, demands, claims, actions or proceedings

incurred as a result of an alleged breach of this clause by the Supplier. The Leisure Trust may monitor the Supplier's compliance with the 1998 Act at periodic intervals during the performance of the Contract. The Leisure Trust may wish to be provided with demonstrable evidence as to how the Supplier intends to secure compliance with the provisions of the 1998 Act

- d) The Supplier shall provide such information the Leisure Trust may reasonably request for the purpose of assessing the suppliers compliance with Equality & Human rights.

1.29

Equipment Services and Materials

The Supplier shall provide all equipment, services and materials as may at any time be necessary for the provision of the Contract to the Contract Standard.

All equipment, services and materials used by the Supplier shall conform to the latest relevant British Standards or European Standards Specification where such exists or where no such specifications exists to the standard set by the Client Officer acting reasonably and the Supplier shall upon request furnish the Client Officer with evidence to prove that such equipment and materials comply with this condition.

The Supplier shall permit any of the Leisure Trust's staff nominated for such purpose to inspect, with or without prior notice, at any reasonable time, any equipment, staff or materials used or proposed to be used by the Supplier in or about the provision of the Contract and the Supplier shall co-operate with such staff, so as to facilitate the carrying out of such inspections.

Where it is found that equipment, services , staff or materials used or proposed to be used in the provision of the Contract do not meet the Specification, the Client Officer shall require the Supplier to immediately remove such equipment or materials from the provision of the Contract, and forthwith substitute items meeting the Specification.

1.30

Confidentiality

The Supplier shall keep confidential and shall ensure that its staff keep confidential any and all information which is learnt or obtained by the Supplier and/or its staff in the provision of the Contract and shall enter into a confidentiality agreement with the Leisure Trust should this be required by the Leisure Trust.

The Supplier shall not dispose nor part with possession of any material provided to him by the Leisure Trust pursuant to the Contract other than in accordance with the express written instructions of the Leisure Trust.

1.31

Value Added Tax

Sums payable to the Supplier under this Contract shall be exclusive of Value Added Tax which shall be paid by the Leisure Trust at the rate and in the manner for the time being prescribed by law.

Each invoice shall clearly detail (i) which part or parts of any such fees are exempt from Value Added Tax, (ii) which part or parts of any such fees bear the zero rate of Value Added Tax and (iii) which part or parts of any such fees

bear a rate of Value Added Tax greater than zero, in each case specifying the exact rate chargeable.

If the Leisure Trust objects to any VAT treatment in any part of any such invoice and such objection cannot be resolved by the parties, the Leisure Trust may require the Supplier to refer to the Commissioners of Custom and Excise ("the Commissioners") any dispute, difference or question in relation to any matter specified in Section 40(1) of the Finance Act 1972. If the Supplier refers the matter to the Commissioner and the Leisure Trust is not satisfied with their decision on the matter, the Supplier shall at the Leisure Trust's request refer the matter to a Value Added Tax Tribunal by way of appeal under Section 40 of the Act whether the Supplier is so dissatisfied or not. Should the Supplier be required to deposit a sum of money equal to or part of the tax claimed under Section 40(2)A of the Act, the Leisure Trust shall pay an equivalent sum to the Supplier. The Leisure Trust shall further reimburse the Supplier any cost or expenses reasonably and properly incurred in making the reference (less any cost awarded to the Supplier by the Tribunal).

Upon final adjudication by the Commissioners or, in the event of reference to a Tribunal, the Leisure Trust shall pay the amount of Value Added Tax adjudged due to the Supplier. Should the amount already be paid by the Leisure Trust either by way of payment of Value Added Tax or by way of reimbursement of any money required to be deposited by the Supplier with the Commissioners exceeds the Value Added Tax adjudged to be due to the Supplier, the Supplier shall forthwith repay such excess to the Leisure Trust

No invoice shall be rendered by the Supplier to the Leisure Trust in respect of any fees payable under the Contract until the Leisure Trust has confirmed in writing its satisfaction with and acceptance of the work to which the charges relate. Except to extent specified elsewhere, invoices will be monthly in arrears, payable by the Leisure Trust within 30 days of invoice.

1.32

Supplies

The Supplier shall be responsible for establishing the Supplier's own sources of supply for materials goods and services and shall be responsible for ensuring reasonable and proper conduct by the Supplier's suppliers, contractors and staff whilst on the Leisure Trust's premises.

1.33

Liability of Leisure Trust

- a)
 - i) The Leisure Trust shall in no circumstances be liable to the Supplier for any consequential, economic or financial loss of any kind whatsoever which the Supplier sustains in consequence any failure on the Leisure Trust's part whether directly or indirectly to commission the volume of work anticipated by the Supplier.
 - ii) Any information given to the Supplier by way of guide quantities and/or any plan, drawing, report, database, file or similar information in the Specification is only given as a guide. The Supplier agrees that it has ascertained for itself the accuracy of the information and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Supplier's tender. No claim

against the Leisure Trust shall be allowed whether in Contract, in or otherwise on the ground of any inaccuracy.

- iii) The Leisure Trust accepts no liability or responsibility for any loss arising as a result of failure of the Leisure Trust to maintain Fire and Electrical Certificates.
 - ix) No liability will lie against the Leisure Trust for any loss, damage, injury howsoever occasioned, incurred as a result of the Supplier performing the Contract by way of the methods detailed in any documentation submitted by the Leisure Trust as required or otherwise authorised by the Contract Documents.
 - x) No liability will be against the Leisure Trust for any loss, damage, injury howsoever occasioned, incurred as a result of the Leisure Trust curtailing any activity or service in terms hereof.
 - xi) Where consent or approval is referred to this is taken to be prior written consent and no claim shall lie against the Leisure Trust in respect of any delay in processing or refusal to grant such consent. Furthermore no claims shall be against the Leisure Trust in respect of any actions taken by the Supplier following upon the grant of such consent or approval.
- b) Although every care has been taken in the preparation of the Contract Documents, the accuracy of the Specification is not warranted. The Leisure Trust does not accept liability for any errors or omissions. The Supplier shall have been deemed to have satisfied himself in respect of the full extent and nature of the Contract.
 - c) In the event of the Supplier discovering any discrepancy or inaccuracy in the Contract Documents he shall give notice thereof in writing to the Client Officer who shall issue instructions in regard thereof. The Leisure Trust shall also be entitled to rectify any discrepancy or inaccuracy without incurring any liability thereof and the Client Officer shall issue instructions in regard thereto. The Supplier shall carry out and be bound by such instructions. If such instructions change the basis on which the Supplier tendered so as to render any price or rate inappropriate the said instruction shall be treated as a Variation in terms hereof.
 - d) The Council shall have no liability or obligations under the Contract, or otherwise to the Supplier.

1.34

Observation of Statutory Requirements

The Supplier shall comply with all statutory and other provisions to be observed and performed in connection with the Service provided under the Contract and shall indemnify the Leisure Trust accordingly. This shall include obtaining any necessary operator's licenses and others necessary in connection with the requirements of the Contract, including the reasonable use of all Gym Equipment supplied.

The Supplier will co-operate in arrangements for the transfer of all licences as aforesaid then current to such Party as the Leisure Trust shall determine

(including with prejudice to the foregoing generality the Leisure Trust or the Client Officer) with reference to the termination of this Contract.

The Supplier will notify the Client Officer immediately of any proceedings which may lead to the forfeiture of any of the licenses as aforesaid or any objections being made to the renewal of any licence as aforesaid.

The Supplier will provide on demand to the Client Officer all grants of licences as aforesaid and evidence of payment of all fees due in connection therewith, all hereupon deemed to be records and open for inspections in terms hereof.

1.35

Ombudsman

- a) If requested to do so by the Client Officer, the Supplier shall cooperate fully with the Leisure Trust (including but not limited to the provision documentation and statements from staff) in connection with any legal proceedings, Ombudsman enquiries, arbitration or court proceedings in which the Leisure Trust may become involved, or any relevant disciplinary hearing internal to the Leisure Trust, arising out of the provisions of the Contract and where deemed necessary by the Leisure Trust the Supplier shall require its staff to give evidence in such enquiries, arbitration's, proceedings or hearings.
- b) Where the Supplier or any of its staff become aware of any incident, maladministration, accident or other matter which give rise to an Ombudsman enquiry, claim or legal proceedings in respect of the provisions or failure to provide the Services, it shall notify the Client Officer immediately in writing. Such notification shall include all relevant information to enable the Client Officer to investigate the matter fully.
- c) Such information provided or assistance rendered pursuant to the obligation in Sub-Clause (a) and (b) above, in whatever form, shall be at no cost to the Leisure Trust.
- d) Any liability which the Leisure Trust incurs as a result of failure by the Supplier shall be recoverable from the Supplier.

1.36

Costs and Fees

Each party shall bear their own legal and other fees in relation to the Contract Documents. The Supplier shall meet the Leisure Trust's legal, professional and other properly incurred fees in relation to (a) the enforcement of the Contract Documents against the Supplier (b) remedying any default by the Supplier in relation to the Contract Documents and (c) any variation to the Contract Documents.

1.37

Waiver

Failure by the Leisure Trust at any time to enforce the provisions of the Contract or to require performance by the Supplier of any of the provisions of the Contract shall not be construed as a waiver of any such provisions and shall not affect the validity of the Contract, or any part thereof, or the right of the Leisure Trust to enforce any provision in accordance with its terms.

1.38

Injury, Damage and Insurance

- a) The Supplier shall maintain and shall ensure that its Sub-Suppliers maintain during the whole period of the Contract:-
 - i) Third party and /public liability insurance each to the value of **£10,000,000.00** , and
 - ii) Employers liability insurance of **£5,000,000.00**

at its own cost to cover its liability in respect of any one or occurrence or occurrences or series of acts or occurrences arising from one cause for which it may become liable
- b) All said insurance shall require to be exhibited to and approved by the Leisure Trust who's reasonable requests for alteration will be accommodated by the Supplier.
- c) Any amounts due under any self insured deductibles shall be the sole and exclusive responsibility of the Supplier.

1.39

Conflict of Interest

The Supplier shall notify the Client Officer immediately upon becoming aware of any possible conflict of interest which may arise between the interests of the Leisure Trust and any other Client of the Supplier and Supplier shall take all reasonable steps to remove or avoid the cause of such conflict of interest to the satisfaction of the Client Officer.

1.40

Force Majeure

- a) In the event of an Act of God or Force Majeure (which shall include acts of government, fire, tempest, acts of war and related matters, which are both beyond the control of the Supplier and are such that the Supplier with the application of all due diligence and foresight could not prevent) which causes the cessation of or substantial interference with the performance of the Contract, the duty of the Supplier to perform the Contract shall be suspended until such circumstances have ceased. The Leisure Trust shall not be liable to make any payment to the Supplier in respect of any such suspension and any such sum already paid in respect of any part of the Contract not yet performed shall be held to the credit of the Leisure Trust and returned to the Leisure Trust.
- b) For the avoidance of doubt, it is expressly agreed that industrial relations difficulties and failure to provide adequate premises, equipment, materials, consumable and or staff or similar matters, which a prudent and diligent Supplier would have avoided with the application, are not to be considered as events of Force Majeure or Acts of God.
- c) If the period of suspension under Sub-Clause (a) above lasts for longer than one month either party may serve upon the other one month's written notice of termination of the Contract. Unless the service has been resumed before the expiration of such notice the Contract shall terminate in accordance with such notice.

- d) Upon termination of the Contract it is hereby agreed that the Clauses herein dealing with insurance, liability, dispute resolution and termination shall continue in full force and effect.

1.41

Agency

- a) The Supplier is not and shall in no circumstances hold itself out as being the servant or agent of the Leisure Trust for any purpose other than those expressly conferred by this Contract.
- b) The Supplier is not and shall in no circumstance hold itself as being authorised to enter into any Contract on behalf of the Leisure Trust, or in any other way to bind the Leisure Trust to the performance, variation, release or discharge of any obligation.

1.42

Intellectual Property Rights

The Supplier shall not in connection with the performance of the Contract, use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any Intellectual Property Rights.

Any and all Intellectual Property Rights developed under this Contract or arising from the provision of the Contract by the Supplier shall belong to the Leisure Trust and the Supplier agrees that it shall execute or cause to be executed (by its staff if necessary) all deeds, documents and acts required to vest such Intellectual Property Rights in the Leisure Trust.

1.43

Warranties

The Supplier warrants that the Gym Equipment will perform all usual and foreseeable functions for equipments and equipment of their nature. By submission of a tender, the Supplier will be deemed to have certified that such Gym Equipment are fit for purpose and of satisfactory quality, meet any implied or specific needs set out in the Leisure Trust's Invitation to Tender (or normal purposes if none is stated)and those set out in the Supplier's response.

Without prejudice to the Maintenance Services, all warranties including manufacturer's warranties, will require to be assigned to the Leisure Trust and to their assignees whomsoever (including lessees).

The Supplier shall remedy breaches of warranty by the provision of materials and services within a reasonable time (which shall failing agreement be determined by the Leisure Trust acting reasonably) and that without charge to the Leisure Trust.

If the Supplier shall fail to remedy any breach of the said warranty then the Supplier shall be liable to the Leisure Trust for all direct loss and damage suffered by the Leisure Trust as a result of such failure, provided that the Leisure Trust shall have given the Supplier written notice of the breach in question. For the purposes of this Clause, direct loss and damage shall include, without prejudice to any generality, liquidate damages representing loss of cost benefit which would otherwise accrue from the use of the Gym Equipment (such cost benefit to be indicated to the Supplier prior to the execution of the Agreement), in respect of any Article which cannot be put to its intended use for each week, or part thereof. between the date of said breach of warranty until the defect or error in question is remedied.

Notwithstanding the foregoing, all the warranties usually conferred or implied by statute, common law, custom or otherwise shall be available to the Leisure Trust in respect of all Gym Equipment.

1.44 Use of Facilities

When the Supplier is required to carry out repairs/maintenance or other tasks on the premises of the Leisure Trust, the Supplier shall ensure that its operations do not disrupt the orderly running of all those premises and that its staff behave with due consideration towards Leisure Trust staff and others present on those premises. The Supplier shall be responsible for minimising disruption to the normal use of the premises. The Supplier will ensure that their staffs are adequately supervised so that whilst on the premises they do nothing other than perform the relevant services.

1.45 Guarantee of Contract

The parent or holding company of any subsidiary company whose tender is accepted may if the Leisure Trust reasonably requires prior to the commencement date provide to the Leisure Trust a guarantee of Contract. The deed of guarantee shall be in the form required by the Leisure Trust.

1.46 Conflict and Inconsistency

In the event of there arising any conflict between the terms of the Conditions of Contract and any other term of the Contract, then conflicts shall be resolved in accordance with the following priority (a) the Conditions of Contract, (b) the Leisure Trust's Invitation to Tender, and (c) the Supplier's submission.

1.47 Leisure Trust Assignment

The Leisure Trust shall be entitled to assign the benefit of the Contract or any parts thereof to a statutory or other public body or other body contracted to perform operations on behalf of the Leisure Trust. No such Assignment shall be effective without written notice thereof to the Supplier.

Without prejudice to the foregoing generality the Leisure Trust reserves the right to assign the whole or any part of this Contract to such party (hereinafter referred to as 'the third party') as the Leisure Trust may from time to time determine and that upon intimation to the Supplier declaring further that in the event of the Leisure Trust exercising said right of Assignment the word 'Leisure Trust' where it appears throughout the Contract shall be deemed to mean 'the third party' where the Leisure Trust determine and intimate to the Supplier.

1.48 Standing Orders

The Supplier shall comply with the terms of the Leisure Trust's Standing Orders and with regulatory authority throughout the performance of the Contract.

1.49 Leisure Trust Not Bound By Quantities

The Supplier accepts that the Leisure Trust, by acceptance of the Tender, is not bound to purchase any or all of the Gym Equipment, Marketing Services or Training Services in respect of which the Supplier has tendered.

FORMAL AGREEMENT TO TERMS AND CONDITIONS OF CONTRACT

Date:

To: > (insert ITT issuer's name and address)

Dear > (insert name)

INVITATION TO TENDER TO SUPPLY, DELIVER, INSTALL AND COMMISSION GYM EQUIPMENT, WITH TRAINING AND MARKETING SUPPORT PROVISION, AND A 5 YEARS MAINTENANCE SERVICE TO WEST DUNBARTONSHIRE LEISURE TRUST.

TENDER Ref: 1314-59

1. I/We have read the information provided in your Invitation to Tender and subject to and upon the terms and conditions therein, I/We offer to supply the services described in the said Invitation to Tender in such manner as may be required.
2. Terms and Conditions. I/We agree that this tender and any contract which may result there from shall be based upon the documents listed immediately below and that the Buyer is West Dunbartonshire Leisure Trust. The documents are as follows:
 - 2.1 Section 2, the Scope of Requirements as detailed in the Invitation to Tender, document reference "1314-59 Tender Specification LT Gym Equipment".
 - 2.2 Our response – Section 3, Response to Scope of Requirements.
 - 2.3 Section 4, The Pricing Schedule as detailed in the Invitation to Tender.
 - 2.4 The prices to be inserted in the contract shall be those shown in our tender submission.
 - 2.5 Any additional information required by West Dunbartonshire Leisure Trust will be included.
 - 2.6 Any qualifications set out by us, although we understand that making a qualification may result in you disregarding our tender in total.
 - 2.7 The Terms and Conditions set out in Section 5 to the Invitation to Tender, document reference "1314-59 Tender Specification LT Gym Equipment".
 - 2.8 Formal Agreement to Terms and Conditions, Appendix 1.
 - 2.9 The Certificate of Non-Collusion, Appendix 2.
 - 2.10 The Certificate of Non-Canvassing, Appendix 3.
 - 2.11 The Pricing Schedule, Appendix 4. Document reference "1314-59 Appendix 4 of the ITT"

3. The prices quoted in this tender are valid for a period of 90 days from Tender Date and I/We confirm that the terms of the tender will remain binding upon me/us and may be accepted by you at any time before that date.
4. I/We note that the contract shall be valid upon acceptance and signature by both parties of the contract documents.
5. Law. I/We agree that the construction, validity, performance and execution of any contract that may result from this tender shall be governed by and interpreted in accordance with Scot's Law and shall be subject to the exclusive jurisdiction of the courts of Scotland.
6. I/We agree to bear all costs incurred by me/us in connection with the preparation and submission of this tender and to bear any further costs incurred by me/us prior to award of any contract.
7. I/We agree that any other terms or conditions of contract or any general reservation which may be printed on any correspondence emanating from me/us in connection with this tender or with any contract resulting from this tender, shall not be applicable to this tender or to the contract.

Dated this _____ day of _____ 2013

Signed _____ in the capacity of

_____ duly authorised to sign

tenders for and on behalf of _____ (Block Capitals please)

Registered Address: (Block Capitals please)

NON-COLLUSION CERTIFICATE

1. We certify that this is a bona fide tender, and that we have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangement with any other person. We also certify that we have not done, and we undertake that we will not do, at any time before the hour and date specified or the return of this tender any of the following acts:
- a) communicate to any person, other than the person calling for this tender, the amount or approximate amount of the tender, except where the disclosure, in confidence, of the amount or approximate amount of the tender was necessary to obtain insurance premium quotations and where disclosure is made, in confidence, to professional advisers who reasonably require to be involved in the preparation of the tender;
 - b) enter into any agreement or arrangement with any other person that s/he shall refrain from tendering or as to the amount or for conditions of any tender to be submitted;
 - c) offer or pay or give or agree to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the services any act or omission;
 - d) cause or induce any person to enter into such agreement as is mentioned in paragraph (b) above or inform us of the amount of any rival tender.
2. In this certificate, the word 'person' includes any persons and any body or association, corporate or unincorporated; and 'any agreement or arrangement' includes any such transaction, formal or informal, and whether legally binding or not.

We confirm that we accept that any breach of the conditions of this non-collusion certificate will inevitably lead to the rescission of the contract.

Dated this _____ day of _____ 2013

Signed _____ in the capacity of

duly authorised to sign for and on behalf of

_____ (Block Capitals please)

CERTIFICATE OF NON-CANVASSING

We hereby undertake that we have not canvassed or solicited, nor will in the future canvass or solicit, any officer or employee or adviser of West Dunbartonshire Leisure Trust in connection with this tender and that persons employed by us acting on our behalf have not and will not do any such act.

In this Certificate the word "person" includes any persons and any body or association, corporate or unincorporated and "agreement" or "arrangement" include any such transactions, whether formal or informal, legally binding or not.

Dated this _____ day of _____ 2013

Signed _____ in the capacity of

duly authorised to sign for and on behalf of _____ (block capitals please)